

[ 1] Volume I  
[ 2] Pages 1 to 91  
[ 3] Exhibits 1 to 8  
[ 4] UNITED STATES DISTRICT COURT  
[ 5] DISTRICT OF MASSACHUSETTS  
[ 6] JOSEPH CHRISTOFORO,  
[ 7] Plaintiff(s),  
[ 8] v. Civil Action  
[ 9] JULIO LUPO, FRANK G. COUSINS, JR., No. 03 CV 12307 RGS  
[ 10] INDIVIDUALLY AND IN HIS CAPACITY AS  
[ 11] ESSEX COUNTY SHERIFF, AND CERTAIN  
[ 12] UNKNOWN INDIVIDUALS,  
[ 13] Defendant(s).

[ 13] DEPOSITION OF JULIUS J. LUPO, a witness called by  
[ 14] counsel for the Plaintiff, taken pursuant to the  
[ 15] applicable rules, before Diane L. McElwee, Registered  
[ 16] Merit Reporter and Notary Public in and for the  
[ 17] Commonwealth of Massachusetts, at the Offices of  
[ 18] GILMORE, REES, CARLSON & CATALDO, P.C, 1000 Franklin  
[ 19] Village Drive, Franklin, Massachusetts, on Monday,  
[ 20] May 16, 2005, commencing at 2:35 PM.

[ 22] DIANE L. MCELWEE, RPR, RMR  
[ 23]  
[ 24]  
[ 25]

[ 1] PRESENT:  
[ 2] GILMORE, REES, CARLSON & CATALDO, P.C  
[ 3] 1000 Franklin Village Dr.  
[ 4] Franklin, MA 02038  
[ 5] by Edward J. McCormick, III, Esq.  
[ 6] for the Plaintiff  
[ 7] MONAHAN & PADELLARO  
[ 8] 43 Thorndike St.  
[ 9] Cambridge, MA 02141  
[ 10] by Jay Hodapp, Esq.  
[ 11] for the Defendant Julio Lupo  
[ 12] MERRICK, LOUISON & COSTELLO  
[ 13] 67 Battery March St.  
[ 14] Boston, MA 02110  
[ 15] Stephen Pfaff, Esq.  
[ 16] for the Defendant Frank G. Cousins, Jr.  
[ 17]  
[ 18]  
[ 19]  
[ 20]  
[ 21]  
[ 22]  
[ 23]  
[ 24]  
[ 25]

## I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RE-CROSS
JULIUS J. LUPO				
by Mr. McCormick	4			
by Mr. Pfaff		75		
by Mr. McCormick			83	
by Mr. Hodapp				84
by Mr. McCormick			85	
by Mr. Hodapp				88
by Mr. McCormick			88	

## E X H I B I T S

No.		Page
1	Statement given to Mr. Roche on 1/2/03, 36 pages	45
2	Incident report	53
3	Receipt for having read the employee handbook dated 1/25/99	55
4	Document given to Mr. Lupo after the hearing by Sheriff Cousins	62
5	Settlement agreement, three pages	67
6	Resignation letter	67
7	Receipt for having read the employee handbook dated in 2001	76
8	Receipt for having read the employee handbook dated 1/25/99	76

## P R O C E E D I N G S

[ 1] MR. MCCORMICK: Counsel, with  
[ 2] regards to stipulations, the usual stipulations we  
[ 3] have had in previous depositions, that being that all  
[ 4] objections except as to the form of the question and  
[ 5] motions to strike will be reserved until the time of  
[ 6] trial?  
[ 7]  
[ 8]

[ 9] MR. PFAFF: Fine.

[ 10] MR. HODAPP: Agreed.

[ 11] MR. MCCORMICK: With regard to  
[ 12] reading and signing this deposition, what's your  
[ 13] preference, counsel?  
[ 14]

[ 15] MR. HODAPP: I would request the  
[ 16] opportunity to read and sign if we could, waive the  
[ 17] notary.

[ 18] MR. MCCORMICK: Okay. Thirty days?

[ 19] MR. HODAPP: Please.

[ 20] JULIUS J. LUPO, a witness identified and sworn, was  
[ 21] examined and testified as follows:

## D I R E C T E X A M I N A T I O N

[ 22] BY MR. MCCORMICK:

[ 23] Q State your name, please.  
[ 24]  
[ 25]

- [ 1] A It's a corporation.
- [ 2] Q That is registered with the Secretary of
- [ 3] States's Office in the Commonwealth of Massachusetts?
- [ 4] A Yes, yes.
- [ 5] Q Who is the president of that corporation?
- [ 6] A I am, myself.
- [ 7] Q Who owns the stock in that corporation?
- [ 8] A I do.
- [ 9] Q 100 percent?
- [10] A Yes.
- [11] Q And the location, the property where Lupo's
- [12] Pizza is located, who owns that?
- [13] A S.R. Wiener Corporation.
- [14] Q Do you pay them rent?
- [15] A I pay them rent.
- [16] Q Do you have a lease?
- [17] A Yes, I have a seven-year lease.
- [18] Q By that lease you are not only leasing the
- [19] real property; you are leasing the building?
- [20] A I don't understand that.
- [21] Q Do you lease the building from anyone else
- [22] than the entity you just described?
- [23] A No, just from S.R. Wiener.
- [24] Q What do you pay a month for rent?
- [25]

- [ 1] Sheriff's Department in 1999?
- [ 2] A To be an institutional cook.
- [ 3] Q What were your duties and responsibilities
- [ 4] as an institutional cook?
- [ 5] A To make sure that the meals for the inmates
- [ 6] is correct and to supply recipes to make the product.
- [ 7] Q Did you actually cook?
- [ 8] A Yes, I cooked for the staff, for the
- [ 9] correctional officers, and all the staff of the Essex
- [10] County Jail.
- [11] Q So you cooked for the staff and the
- [12] corrections officers?
- [13] A Yes.
- [14] Q But you didn't cook for the inmates?
- [15] A No.
- [16] Q Who cooked for the inmates? This is 1999.
- [17] A The inmates did.
- [18] Q The inmates do their own cooking?
- [19] A Yes. We give them the recipe, go over the
- [20] recipe with them, tell them how to do the procedures,
- [21] and let them do the product.
- [22] Q So, in other words, you taught them how to
- [23] do it, and they would cook their meals themselves?
- [24] A Yes. There was two other correctional cooks
- [25]

- [ 1] A 27, \$2800 for rent.
- [ 2] Q Now prior to opening Lupo's, where did you
- [ 3] work?
- [ 4] A I worked for the Department of Corrections,
- [ 5] Middleton, Mass.
- [ 6] Q Is that the Essex County --
- [ 7] A Essex County Sheriff's Department.
- [ 8] Q When did you first go to work for the Essex
- [ 9] County Sheriff's Department, Mr. Lupo?
- [10] A Either December of '97 or January '98,
- [11] something like that. I am not actually sure of the
- [12] date.
- [13] Q If I show you your answers to
- [14] interrogatories, No. 3, Please state your employment
- [15] background listing the name and address of each
- [16] employer you have worked from 1985 to the present,
- [17] you state that you went to work for the Essex County
- [18] House of Correction in Middleton, Mass. in 1999.
- [19] Would that refresh your memory?
- [20] A Yes.
- [21] Q So it would be 1999 that you went --
- [22] A Yes, that would be correct.
- [23] Q Now for what job were you hired to perform
- [24] at the Essex County House of Correction by the
- [25]

- [ 1] there, too. We all worked together, because if I was
- [ 2] out, then another gentleman would step in and take
- [ 3] over.
- [ 4] Q Now is that the position that you took when
- [ 5] you first joined the Sheriff's Department in 1999?
- [ 6] A Yes.
- [ 7] Q Did that job change at any time?
- [ 8] A It changed in approximately maybe a year or
- [ 9] year and a half later. I was switched to the first
- [10] shift and became assistant food director.
- [11] Q What were your duties and responsibilities
- [12] as an assistant food director?
- [13] A My responsibilities and duties were the
- [14] same, to prepare the meals, teach inmates how to do
- [15] the meals and cook for staff.
- [16] Q How did that differ from the job you had
- [17] when you first started in 99?
- [18] A Because I was just mainly there for the
- [19] second feeding.
- [20] Q So your job stayed the same, but it was what
- [21] time of day you were there?
- [22] A Yes.
- [23] Q When you say the second feeding, what times
- [24] are the inmates fed in Middleton?
- [25]

[1] A Yes, it could be.

[2] Q What were you taught at this boot camp?

[3] A C.P.R., self-defense, how to use a pistol,

[4] a rifle, what to do when there are riots.

[5] Q Anything else?

[6] A That's all.

[7] Q What were you taught relative to

[8] self-defense?

[9] A Can you rephrase that a little?

[10] Q Sure.

[11] You say you were taught self-defense at

[12] this boot camp. From whom were you being taught to

[13] defend yourself against?

[14] A Outbreak of crowds.

[15] Q Meaning inmates?

[16] A Inmates.

[17] Q Were you taught any specific tactics or body

[18] maneuvers on how to defend yourself from inmates?

[19] A I don't recall what the specifics were.

[20] Q Were you taught how to defend yourself in

[21] case an inmate attacked you?

[22] A Yes.

[23] Q And what were some of the things you were

[24] taught?

[25]

[1] A I don't recall that. Like, put your hands

[2] up.

[3] Q Were you taught any specific vulnerable

[4] parts of the body on which to strike an inmate if you

[5] were attacked?

[6] A No.

[7] Q You don't remember anything else, what you

[8] were taught about self-defense?

[9] A No.

[10] Q You were taught how to use a pistol and

[11] rifle?

[12] A Yes.

[13] Q And your position at this time was assistant

[14] food director, correct?

[15] A Yes.

[16] Q And you were taught what to do if there was

[17] a riot, correct?

[18] A Yes.

[19] Q What were you taught to do if there was an

[20] inmate riot at the House of Correction?

[21] A Control the situation, lock down the

[22] premises, and call the riot guards in.

[23] Q With regard to controlling the situation,

[24] what were you taught on how to control inmates?

[25]

[1] MR. PFAFF: Objection.

[2] MR. McCORMICK: I will rephrase.

[3] Q Were you given any specific instructions on

[4] how to behave during an inmate riot?

[5] A Just to let the riot guards, officers handle

[6] it.

[7] Q What were you instructed to do?

[8] A To make sure all the rest of the inmates go

[9] back to their locks.

[10] Q Meaning the nonrioting inmates?

[11] A Yes.

[12] Q Were you given any instructions on what to

[13] do when an inmate refused any of your directives?

[14] A No.

[15] Q What else were you taught to do relative to

[16] if there was a riot at the House of Correction?

[17] A Just the people to call and stay there.

[18] Stay at a safe place.

[19] Q Did you ever experience a riot at the Essex

[20] County House of Correction?

[21] A No.

[22] Q Did you ever use a pistol at the Essex

[23] County House of Correction?

[24] A No.

[25]

[1] Q Ever use a rifle?

[2] A No.

[3] Q Ever use any means of self-defense that you

[4] were taught?

[5] A No.

[6] Q Did you ever strike an inmate?

[7] A Yes.

[8] Q When was the first time you struck an inmate

[9] at the Essex County House of Correction?

[10] A December 23d, Joseph Cristoforo.

[11] Q Tell us about that incident. What happened

[12] that caused you to strike Mr. Cristoforo on or about

[13] December 23, 2002?

[14] A They were doing the meals.

[15] Q When you say "they," who do you mean?

[16] A The inmates were setting up the trays for

[17] lunch feeding. Inmate Cristoforo was causing a

[18] disturbance in the line to slow the production down.

[19] Q What was he doing?

[20] A Talking between all the inmates, causing

[21] problems.

[22] Q What problems was he causing?

[23] A Just work problems, work-related problems.

[24] Q Like what?

[25]

[ 1] A Like stopping the inmates from working up to  
 [ 2] par.  
 [ 3] Q Did he physically stop anyone from working  
 [ 4] up to par?  
 [ 5] A No.  
 [ 6] Q So he did this, in your opinion, simply by  
 [ 7] speaking?  
 [ 8] A Speaking.  
 [ 9] Q What was he doing?  
 [10] A Swearing.  
 [11] Q What was he saying other than swearing?  
 [12] A I don't recall.  
 [13] Q What specific words, if any, do you recall  
 [14] him saying?  
 [15] A That this place sucks; we don't have to do  
 [16] this work.  
 [17] Q Anything else?  
 [18] A That's all.  
 [19] Q How many times did he say that?  
 [20] A I don't remember.  
 [21] Q More than one?  
 [22] A No, probably once, maybe twice. After the  
 [23] first time I went to tell him to be quiet, and then  
 [24] when I went back, then they started again. They  
 [25]

[ 1] started banging.  
 [ 2] Q You heard him say, This place sucks; we  
 [ 3] don't have to do this, words to that effect?  
 [ 4] A Something like that.  
 [ 5] Q You are not sure what the words were?  
 [ 6] A Right.  
 [ 7] Q What did you do when you heard that?  
 [ 8] A I went over and told him to keep the noise  
 [ 9] down and keep the line moving.  
 [10] Q What did he say to you?  
 [11] A He said something, and I turned my back.  
 [12] Q Then what?  
 [13] A He said, Fuck him.  
 [14] Q Then what did you do then?  
 [15] A I went back to my table, and when the noise  
 [16] started up again, I went to Cristoforo and flicked  
 [17] his ear and told him to be quiet.  
 [18] Q When you flicked his ear, as you put it, was  
 [19] he facing away from you?  
 [20] A No. He was looking straight ahead.  
 [21] Q You came at him from the side?  
 [22] A Yes.  
 [23] Q He wasn't looking at you when you touched  
 [24] him?  
 [25]

[ 1] A No.  
 [ 2] Q When you say "flicked his ear," what hand  
 [ 3] did you use?  
 [ 4] A My right hand.  
 [ 5] Q Was it open or closed?  
 [ 6] A It was a back flip (indicating).  
 [ 7] Q You made a gesture. You struck him with the  
 [ 8] back part --  
 [ 9] A -- back part of my hand.  
 [10] Q It was an open hand?  
 [11] A Open hand.  
 [12] Q Where on Mr. Cristoforo's body did you  
 [13] strike him?  
 [14] A His earlobe.  
 [15] Q His earlobe?  
 [16] A Yes.  
 [17] Q Did you touch his neck?  
 [18] A No.  
 [19] Q So you gave a backhand and only touched his  
 [20] earlobe?  
 [21] A No, not a backhand. I flicked him, a flip.  
 [22] Q How far away from him when you first  
 [23] initiated --  
 [24] A Right beside him.  
 [25]

[ 1] Q How far away?  
 [ 2] A Not even two inches.  
 [ 3] Q He hadn't turned to look at you?  
 [ 4] A No.  
 [ 5] Q So you were two inches -- you came up upon  
 [ 6] him two inches away, and he hadn't turned to look at  
 [ 7] you?  
 [ 8] A Right.  
 [ 9] Q And you flipped the back part of your hand  
 [10] and hit just his earlobe?  
 [11] A Just his earlobe.  
 [12] Q No other part of his body?  
 [13] A No.  
 [14] Q You are sure?  
 [15] A Yes.  
 [16] Q What did he do?  
 [17] A Just continued working.  
 [18] Q Didn't make any reaction at all?  
 [19] A No.  
 [20] Q You hit his earlobe, and he didn't bat an  
 [21] eyelash?  
 [22] A No.  
 [23] Q Didn't turn to you and say, What do you  
 [24] want?  
 [25]

[ 1] You have it.

[ 2] Q Can I see that for a minute, Mr. Lupo?

[ 3] MR. McCORMICK: It's 36 pages.

[ 4] MR. PFAFF: Okay.

[ 5] (Pause)

[ 6] (Discussion off the record)

[ 7] (Pause)

[ 8] Q Mr. Lupo, have you had an opportunity to  
[ 9] read the document I just showed you?

[10] A Yes.

[11] Q And is that in fact your statement that you  
[12] gave Mr. Michael Roche on January 2, 2003?

[13] A Yes.

[14] MR. McCORMICK: Can we have this  
[15] marked as Exhibit 1, please.

[16] (Exhibit 1 marked for identification)

[17] Q For the record, Exhibit 1 is your statement.  
[18] You gave that to Michael Roche on January 2, 2002,  
[19] correct?

[20] A Yes.

[21] MR. PFAFF: What's the date?

[22] MR. McCORMICK: January 2, 2003.

[23] Q The inmates that were on line with  
[24] Mr. Cristoforo the day you struck him, do you recall

[25]

[ 1] who they were?

[ 2] A No, I don't.

[ 3] Q Do you know an inmate by the name of Eugene  
[ 4] Fernandes?

[ 5] A No.

[ 6] Q So it's safe to say you don't know he was  
[ 7] one of the inmates on the line or not?

[ 8] A It's safe to say I don't know if he was one  
[ 9] of the inmates.

[10] Q What about Mr. Smith? I believe we talked  
[11] about an inmate named Robert Smith earlier. Do you  
[12] recall if he was on the line that day?

[13] A Yes.

[14] Q Was he?

[15] A Yes.

[16] Q What about Ralph Sordello?

[17] A I don't recall.

[18] Q Do you know an inmate by the name of David  
[19] Souther, S O U T H E R?

[20] A I don't recall that.

[21] Q You don't recall him?

[22] A I don't recall him.

[23] Q You do recall Mr. Smith was on the line that  
[24] day?

[25]

Page 47

[ 1] A Yes.

[ 2] Q Do you recall where he was working in  
[ 3] relationship to Mr. Cristoforo on December 23, 2002?

[ 4] A No, I don't know where.

[ 5] Q But in total there were only about eight  
[ 6] inmates working, correct?

[ 7] A Yes.

[ 8] Q And he was working on the assembly line as  
[ 9] one of those eight inmates?

[10] A Yes.

[11] Q Okay. After the incident where you struck  
[12] Mr. Cristoforo, you say you went to the supermarket,  
[13] correct?

[14] A Yes.

[15] Q And you came back. Did you return to the  
[16] Essex County jail?

[17] A Yes.

[18] Q What did you do when you returned?

[19] A When I returned, an officer told me that  
[20] Mr. Cristoforo went to the infirmary.

[21] Q What did you say to him?

[22] A I said, Why?

[23] He said he was throwing up in the back.

[24] Q What was your reaction?

[25]

Page 48

[ 1] A I called Deputy McCoy.

[ 2] Q Why?

[ 3] A To take me up to the infirmary to see what  
[ 4] was going on.

[ 5] Q To do what?

[ 6] A To take me to the infirmary to see Joe  
[ 7] Cristoforo.

[ 8] Q Joe Cristoforo was already at the infirmary.  
[ 9] You called Mr. McCoy to bring him to the infirmary,  
[10] correct?

[11] A To bring me to the infirmary.

[12] Q Why did you want to go to the infirmary?

[13] A See what was Cristoforo's problem.

[14] Q Did you go to the infirmary?

[15] A With Deputy McCoy.

[16] Q Would that be a yes?

[17] A Yes.

[18] Q And this was on December 23, 2002?

[19] A On or about that day.

[20] Q Is it the same day you struck

[21] Mr. Cristoforo?

[22] A Yes, the same day I struck Joe Cristoforo.

[23] Q When you went to the infirmary, did you see  
[24] Mr. Cristoforo there?

[25]